don't want the jury to hear it. He claimed that Ramsey Clark's testimony wouldn't be relevant. It was one of the more outrageous aspects of this judge's outrageous behavior.

When our case came up to the appeals court, they said that of course Ramsey Clark had valuable information and had a right to testify. I believe the appeals court agreed with something like a hundred and twenty-eight out of a hundred and twenty-nine reasons we stated as grounds for reversal. The only one they didn't want to make a ruling on was the constitutionality of the law.

So there's the law. It's still on the books. Now, we did not go to Chicago with the intention to incite a riot. But if you asked me a year later, "Did you go to San Francisco, did you go to Washington to incite a riot?" I probably would have been cocky enough to say, "You bet your fucking ass. How are we supposed to change this country? What are we supposed to do? Get some permits? They won't give us permits. We're supposed to have a nice la-de-da? We've already got the shit kicked out of us. You want to talk about law, go up and look at my apartment. The FBI's just gone through it."

You know, we were angry. All the legal ways to change the country had been closed down. And the police, the FBI, the Justice Department were all using illegal means against us. We felt it was just a matter of time before they started picking us all off. After the trial in Chicago, I had a suitcase with phony identification and disguises all ready to go. I figured I'd be underground any minute.

RETRIBUTION FOR ACTS OF CONSCIENCE

Richard Nixon's Vietnam policy was two-sided: a public position of "Vietnamization," to completely disengage American troops and turn the war over to the South Vietnamese; and a secret position of U.S. escalation, to win the war at all costs. Nixon announced the first withdrawal of twenty-five thousand troops in June 1969, followed by more withdrawals in September and December, in no small part to defuse domestic opposition. Secretly, however, he ordered the bombing of a neutral nation, Cambodia, and plans were made to bomb North Vietnam's cities, mine its harbors, and invade the country.[70]

A former Defense Department official and State Department representative in South Vietnam and, in 1967, a strategic analyst at the Rand Corporation, Daniel Ellsberg was seeking ways, within the administration, to forestall military escalation. But he was meeting with no success.

Told of the secret bombing of Cambodia and convinced that Nixon was in fact on a course that would escalate the war, Ellsberg began to photocopy the documents that came to be known as the "Pentagon Papers," part of which he had authored. The classified Defense Department history revealed that U.S. involvement in Vietnam had been "either deliberately distorted or withheld altogether from the public."[71] In November 1969, Ellsberg gave portions of the Pentagon Papers to William Fulbright, chairman of the Senate Foreign Relations Committee. But it would be more than a year, on June 13, 1971, before Ellsberg succeeded in having them made public, on the front pages of the *New York Times*.

The administration claimed that the publication of the documents jeopardized the nation's defense. Henry Kissinger, especially, railed against Ellsberg—"the most dangerous man in America today," who "must be stopped at all costs."[72] But whatever danger Ellsberg's release of the Pentagon Papers posed, it was not, apparently, to national security.[73] The secretary of defense estimated that 98 percent of the documents could have been declassified, and the Defense Department itself soon published virtually the same material.[74] Solicitor General Erwin N. Griswold, who argued before the Supreme Court that the publication of the Pentagon Papers constituted a "grave and immediate danger to the security of the United States," later admitted that he had "never seen any trace of a threat to national security from the publication."[75]

Richard Nixon sought and won a temporary injunction prohibiting the further publication of the papers. "Never before," David Wise notes, "had the federal government gone into court to try to censor a newspaper."[76] Two weeks later, the Supreme Court struck down the injunction. Then, after Nixon's Justice Department had secured an indictment against Ellsberg for releasing the papers, it continued to interrogate witnesses using grand jury proceedings that had less to do with the grand jury's function—securing indictments for criminal acts—than with the aim of fishing for information.[77] Subpoenaed were Southeast Asia scholars, journalists, congressional aides, and the records of the Unitarian Church and Beacon Press, which had published the Pentagon Papers. Harvard professor and Vietnam expert Samuel Popkin testified before the grand jury that he knew nothing of the Pentagon Papers release, but he was pressed to reveal the sources of his own scholarly research, which he refused to do. Popkin went to prison for his principles, "a long step toward legitimizing the misuse of grand juries as instruments of political intimidation," the *New York Times* editorialized.[78]

The president also created a clandestine White House unit, known as

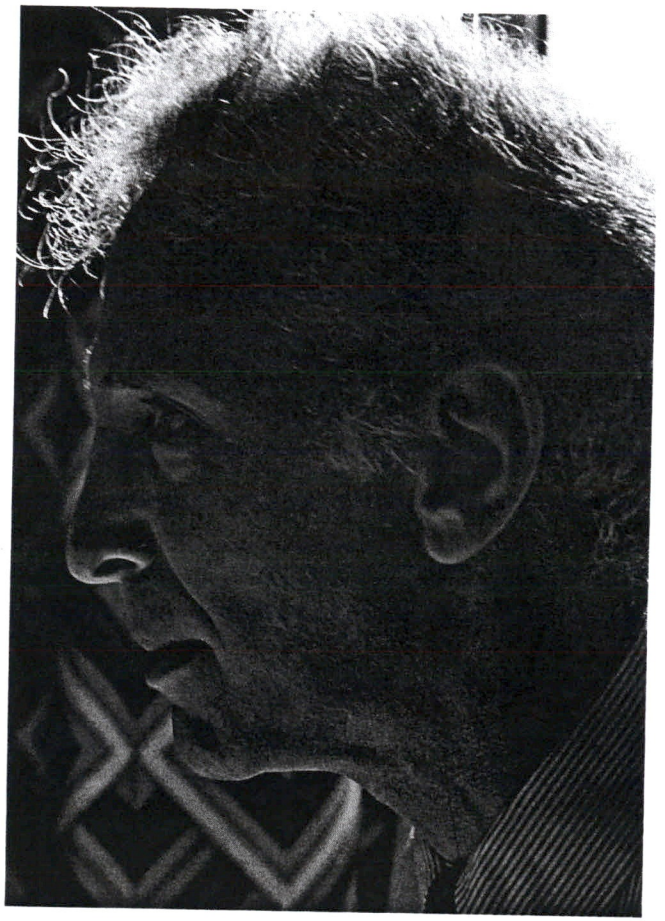
"the Plumbers," ostensibly to plug information leaks to the press. In fact, this group operated outside the law to exact retribution by seeking and leaking derogatory information about Ellsberg to the press or by engaging in direct acts to humiliate or harm him. "Get it out, leak it out," the Nixon tapes revealed the president ordering his top aides. "I want to destroy him in the press; is that clear?"[79] Then, late on the night of September 3, 1971, Plumbers E. Howard Hunt and G. Gordon Liddy stood guard outside the office of Ellsberg's psychiatrist, Dr. Louis Fielding, as their three Cuban accomplices broke in. According to Special Watergate Prosecutor Leon Jaworski, they were in search of information to "smear and defame [Ellsberg] before he came to trial" and to "discredit him as a Vietnam War critic."[80] The president's chief domestic affairs adviser, John Ehrlichman, had approved the Plumbers' robbery attempt; and Richard Nixon, according to his chief of staff, "had ordered it himself."[81]

The legal case against Ellsberg, based heavily on the Espionage Act, did not go to trial until 1973. Ellsberg was charged with conspiring with others to steal classified materials and deliver them to persons not entitled to receive them. When the judge in his case learned of the Fielding burglary and other instances of government misconduct, he declared a mistrial and dismissed the charges. The Plumbers' illegal activities against Ellsberg were among the abuses of power cited by the House of Representatives in considering Nixon's impeachment. "By leaking the Pentagon Papers, Daniel Ellsberg had promoted the downfall of the Nixon administration, a downfall that," Tom Wells believes, "played a pivotal role in ending the war."[82]

DANIEL ELLSBERG

The fact is that in Vietnam we were forcing a war on a nation that overwhelmingly would have preferred peace under either competing regime. We were choosing war for the people of Vietnam. And I believe that most officials who knew the situation at all, including my colleagues, were well aware that it was without the consent of the Vietnamese. There's really nothing worse you can do to a people than to fight a war in their country to which they do not assent.

And being in Vietnam was enough to teach me, as it did nearly everyone who went there, that we had been massively lied to. The truth was that we were involved in a hopeless stalemate, which was in fact getting larger and larger in scale. That perception was very widely shared in the Pentagon and in the armed services—among infantrymen. Most everything they had heard before they went had been a lie. And everything that was being said to the public while they were there was a lie. But they didn't have the proof, the documentary proof, that the president, Lyndon Johnson, was consciously lying. In fact, most people in the system were under the misapprehension that it was only their own colleagues and their immediate superiors who were doing the lying and perhaps were fooling the president. What the Pentagon Papers revealed was that the president himself was directing this deception to the public and, in fact, was getting quite adequate information about the realities in Vietnam.



DANIEL ELLSBERG

Even though the papers were history and didn't apply to Richard Nixon directly, I hoped that releasing them to the public would be worthwhile. But if I had not been aware through friends of mine who were still in the administration that new escalations were very likely, I do not think that I would have put out the Pentagon Papers simply for the satisfaction of educating the public. The reason for my being willing to tell the American people what I knew with documentary evidence—and to go to prison for it, even for the rest of my life, if necessary—was above all an urgent feeling that they had to be alerted to this secret past in order to recognize it in what was going on at the moment and act to avert further escalations in that same war.

My immediate concern in the fall of '69, when I copied the papers, was that Nixon would publicly commit himself to the war and that it would then prove almost impossible for him to withdraw. My further concern was that in the course of attempting to achieve an outcome that was acceptable to him, he would be escalating the war. Very specifically, I was afraid that 1969 and 1970 would be a replay of 1964 and 1965, when secret plans had finally led to a major escalation of the war while I was in the Pentagon. Indeed, the Pentagon Papers did not come out until over a year and a half later; during that time, there were two invasions in Indochina—the invasions of Cambodia and Laos—and a renewal of heavy bombing over North Vietnam. So my fears were justified.

But some of the worst of the escalations were averted: We never used nuclear weapons, and we never invaded North Vietnam. And contrary to what most scholars, as well as the public, normally believe, those two possibilities were not remote at all. They were very possible, indeed probable, if the public had not acted vigorously. We now know that it was only the massive mobilization against the war, known as the Moratorium in October and November of '69, that deterred Nixon from carrying out heavier escalations than anything undertaken before. And the Pentagon Papers, of course, helped to encourage the public to act in the later stages of the war.

Before I made the Pentagon Papers public, I had spent over a year intermittently reading work by Martin Luther King Jr., Gandhi, and others. Just in March of 1968—by coincidence, the week Martin Luther King Jr. was killed—I became aware of this approach. King was very self-consciously a scholar of Gandhi. However, he said in his book *Stride Toward Freedom* that it wasn't until he encountered the actual situation brought about by the decision of Rosa Parks that he was challenged to

put Gandhian thought into action. It does take the example of someone like that, I think, face to face, to make you aware that you have the capability of doing such a thing and that it's a meaningful kind of action for someone like yourself.

Having read the theory, I met people, younger people, who shared these ideas, and they were going to prison. That suggested to me: What should I be doing if I were willing to take the risk of jail? And that question immediately, of course, suggested to me the Pentagon Papers, because they were in my safe.

I first gave the information to Senator William Fulbright at the end of November 1969, but he didn't actually put it out. In the meantime, the FBI became aware of what I'd done. My former wife had told her stepmother, who was very conservative and who immediately informed the FBI. Then the FBI investigated me. When they came to my former wife, she refused to talk to them. They then went to my employer, the Rand Corporation, and told them that it was the bureau's impression that I had given the Pentagon Papers to the senator. Rand didn't do much because they assumed the FBI was taking care of it. The FBI, in fact, more or less dropped it, on the assumption that I'd only given it to Fulbright. It could have gotten them into trouble, taking on the Senate, so they didn't pursue it.

After all, it wasn't illegal, as they knew. What I had done was clear grounds for firing and clear grounds for depriving me of my security clearance, which, in a way, is worse than firing. It means you can't get a similar job elsewhere. It's like a blacklist. But firing and revoking clearance are both administrative steps. I had not, in fact, broken a law.

What I'd done was copy information, and whether information can be stolen turns out to be a very murky area of the law. In fact, by virtually every precedent, the answer is no. When you are copying information, you're not really stealing. If the person still has the information, you're just sharing it, in effect. You can steal paper, and you can steal a form of words. But copyright, for instance, is almost entirely a civil matter, for civil damages and civil suits. Criminal copyright is a very restricted kind of thing. In any event, the government can't copyright anything. So I hadn't violated that, as most people imagined I had. By any previous interpretation of the law, I simply hadn't broken the law.

What challenged the government about what I did was that it was an open act. If they didn't prosecute me, they would admit that there was no law against it. Well, I was prosecuted, but that doesn't mean they expected to win. That's why, in large part, they had to go after me with the

White House Plumbers. They didn't have a case that they really were confident of winning in court.

Of course, when they're coming heavily at you, they have a chance of winning, whatever the law, whatever the strength of their case. As my lawyer, Leonard Boudin, said, "When they say, 'U.S. versus Daniel Ellsberg' and claim you've broken these laws, and the jury hears all this, you're not sure you'll walk out of there free."

I asked him, "What are my odds?" He said, "Fifty-fifty. Face it, Dan. Copying seven thousand pages of 'top secret' documents and giving them to the *New York Times* has a bad ring to it." So we went through two years of proceedings, five months in court.

The FBI early on took the position, which was correct, that I had had no real confederates. Except for a few people who helped me from time to time actually copy the papers, like Tony Russo and my wife, they felt that there was no grand conspiracy. However, the Defense Department and the White House were convinced that there was a big conspiracy, with which they would be able to get the Rand Corporation. They actually didn't care much about the Rand Corporation, but through them they really wanted to get Paul Warnke and Mort Halperin and, perhaps they dreamed, Robert McNamara, Clark Clifford—and Ted Kennedy; he's the one they really wanted to get.*

Actually, they had a good prima facie case. It was a plausible assumption on their part, because I had had associations with these people. The FBI had studied it closely, and they concluded that, plausible or not, there was no conspiracy. And that was another reason why the White House didn't trust the FBI entirely. So they assigned their own people to smear these others, if possible, without relying on doing it in court with legal evidence.

Why did the White House Plumbers go into my psychoanalyst's office? The explanation they preferred to give was that they wanted to see who I'd given the papers to. But the real reason for the break-in was to get information that they could blackmail me with. Someone who interviewed the Cubans involved in the break-in told me that they had been

*Founded in 1948, the Rand Corporation conducts research on national security and domestic policy matters, often for government agencies. Robert McNamara and Clark Clifford were both former secretaries of defense. Paul Warnke and Morton Halperin had been high-ranking Defense Department officials, and Halperin had been a senior staff member of the National Security Council. Edward M. Kennedy, first elected to the U.S. Senate from Massachusetts in 1962, was number one on Richard Nixon's "enemies list." All had questioned or opposed some aspect of the government's conduct of the war in Vietnam.

led to be as interested in my family's personal life as in mine. William Merrill, who prosecuted the Plumbers for the break-in, told me he thought they wanted to scare me off so I wouldn't take the stand in my own trial. If I hadn't testified, my case would have disappeared. The jury had to see what my motives were, to see who I was.

Another thing Merrill suggested was that if they couldn't scare me off the stand, they would get me to leave the country. Escaping from prosecution, of course, would have totally given up the case. They didn't even exclude the idea of causing me to commit suicide. This was a most ambitious thought. This is what they tried to do with Martin Luther King Jr. J. Edgar Hoover sent tapes to Coretta of King's supposed lovemaking, with the inference that it was a good time for him to commit suicide.

The White House didn't get what they wanted with the break-in, so they tried other things. They investigated all my former girlfriends from when I was a bachelor. It was quite a list. They got a lot of sexual promiscuity during that period when I wasn't married, but what could they do with that? It wouldn't hurt my reputation in this society. It just wasn't what they were looking for. So they really didn't get much out of that.

G. Gordon Liddy, one of the Plumbers, made a very interesting revelation. He had proposed, and it eventually had been agreed, that someone should put LSD in my soup at a reception at which I was speaking. I think, by the way, it must have been a reception in my honor by the Federal Employees for Peace in Washington. Liddy said the okay came from on high, which could only mean either the special counsel to the president, Charles Colson, or the president himself. However, it was too late to recruit the waiters for this purpose, and they weren't able to carry this through.

My wife was very worried in that period about crowds and the possibility of somebody getting me. I thought that the government didn't do that sort of thing to Americans. But I was simply wrong. They were trying to do it to me. There was discussion of killing me among the Plumbers and their people, who were CIA people, of course, and were used to this. On May 3, 1972, just before my case was about to come to trial, I was speaking on the steps of the Capitol. Mexican-laundered money, which was later used for Watergate, was first used to bring up eleven Cubans from Miami to Washington. Their orders were to totally incapacitate Ellsberg at this rally.

Of course, that didn't come out until much later, when I learned it from the prosecutor. The story that first appeared in *Time* was that they

were just to punch me in the nose. Well, I couldn't think of any reason for doing that. They were already calling me a traitor and stigmatizing me and having a trial. I couldn't think what punching me in the nose would do. But when I heard that the order was to incapacitate me, I immediately felt sure I knew who ordered it and why. It came from the president, probably with advice from Henry Kissinger and Alexander Haig. It wasn't a matter of punching me in the nose to discredit me. It was a matter of shutting my mouth seriously or forever.

They had given the Cubans the cover story that I was, of all things, going to desecrate the coffin of J. Edgar Hoover, which happened to be lying in state at that moment in another part of the Capitol. Needless to say, our rally had nothing to do with the mourners for that. But the Cubans were told that we were infiltrating the Hoover mourning procession and that they were to protect Hoover's body.

When the Cubans got there, being ex-CIA men or current CIA men, they got very suspicious that they were being set up for something when they realized that the crowd wasn't friendly to their calling me "traitor." They suspected that they had been lied to, as they had been, and were smart enough to choose not to be fall guys. So they threw it. They deliberately punched at people on the side of the crowd and got themselves led away by the police. They were released after two men, one showing FBI credentials and one showing CIA credentials, told the police, "These are good Americans. We vouch for them." Undoubtedly the two were E. Howard Hunt and Liddy, using expired credentials and thus impersonating officers.

I didn't know about the incident at the time, although I recall the people shouting at me and the fighting. I actually saw Frank Sturgis in this fistfighting. I recognized him later in photos taken when he was arrested at the Watergate. He was the potential assassin, the guy who'd been involved in attempted assaults against Fidel Castro and Omar Torrijos of Panama.

In the meanwhile, the president's special counsel, Charles Colson, pled guilty to an operation to defame me in the press by putting out materials that would attack my lawyer, Leonard Boudin. He admitted providing a newsman, who later became President Ford's press secretary, with material for an article on Boudin that would have attacked him as pro-Communist. Colson pled guilty to this mainly, it seems, to avoid being prosecuted for his part in the chain of command that planned to have me incapacitated, which would have been a much more serious charge.

The break-ins at Dr. Fielding's office and at Watergate were not peculiar to Nixon. Nixon did have an innovation, which was to apply tactics that had been used on the Communists and the Socialist Workers Party and other left-wing groups to people who were moderates and liberals, centrists of various kinds. The latter category actually applied to me. It also applied to most people on Nixon's "enemies list." And that's what got a lot of people very excited, that Nixon was using tactics on others that were to be reserved for left-wingers. He was using them profusely against the Democrats and the liberals.

But as far as techniques were concerned, they had all been used. Nothing that Nixon did was worse than what Lyndon Johnson and, for that matter, Bobby Kennedy had done to Martin Luther King Jr. in the way of wire-tapping and blackmail and everything else. Nothing. It's part of the way the country is run. It doesn't mean it has to be that way forever or that it can't be changed. But it's part of the reality. How do you maintain a society that on the one hand consistently conducts an imperial policy, which is no worse or better than any other major imperial country, and on the other hand sees itself as an anti-imperial country that favors self-determination, opposes torture, and is in favor of freedom throughout the world? While it is a country that is democratic in many ways, more than almost any other country, its actions abroad oppose its own institutions.

In actual fact, it took me a long time to learn this. It was long after the Pentagon Papers that I learned that our policy in Vietnam was not an exceptional case. We were supporting, quite consciously, a highly unpopular dictatorship against, let us say, the alternative either of democracy or of a more popular dictatorship, popular in the sense of enjoying wide support and legitimacy. The very widely held idea that the United States favors and supports free institutions abroad is, in respect to the underdeveloped world, very simply a big lie, in the Hitlerian sense of the "big lie." And I don't refer to Hitler just to stigmatize it, but to refer to a matter of authorship here and a technical term. Hitler's point was that large, overarching, comprehensive lies are actually more easily believed and more effective than small lies, which are more subject to incredulity and disproof.

In any case, the notion that the United States backs free institutions in the third world is very simply a lie—and a big lie. We don't favor, we don't support, but we oppose free institutions in the third world when they interfere with our corporate and strategic interests. We are mostly in the position of either overthrowing free institutions, in the rare cases where they exist—as in Chile under Allende, as in Guatemala under Ar-

benz, as in Iran under Mossadegh—or preventing them from emerging. We simply stamp them out where they threaten our interests.

Now the question is, how do you behave in that way—which is not a way we invented but is a classical imperialist mode—and at the same time preserve the impression in our people's minds that they and their government are on the side of liberty throughout the world, including the poor, underdeveloped parts of the world? And the answer is by lying to them, by protecting those lies with an effective secrecy system, and by knocking down people who would attempt to give a more truthful picture.

And so you've got to stigmatize those people. I was a particular threat, I suspect, not only because of my actual expert background but because the special form of stigmatization chosen for me backfired. The articles that came out in *Life* magazine and elsewhere chose to emphasize my "instability," since there was nothing on which to base an accusation of left-wing or Communist sympathy. Well, the way of doing that was to stress how radically I had changed psychologically. So they emphasized the fact that here I was, being very actively antiwar although I had earlier been very actively pro-war. They showed lots of pictures of me as a marine or firing weapons in Vietnam, with a helmet on and actually armed to the teeth. Of course, in our society, they could hardly have given me a more favorable image. What the hell—that gave an impression of me in the public eye as a thoroughly reliable patriot. After that, it was very hard for them to knock me down, even though the headline in *Life* actually said: "From Hawk to Violent Dove." I'm sure they very much regretted printing such pictures.

From the very beginning, the White House Plumbers wanted to get a "psychological profile" on me and to use the psychological smear as much as possible, an interesting analogy to the Russian technique of putting dissenters into psychiatric hospitals. I once did a vigil for General Petro Grigorenko outside some Russian agency in New York, I remember, and I was thinking about that analogy at the time. He was assigned to a psychiatric hospital because he was a dissenter. It struck me how similar that was to the techniques they had used on me, trying to smear me as a psychiatric case. Hunt told the CIA that he wanted to show me as a broken man. They wanted to be able to refer to my oedipus complex knowingly. It was actually a fairly outrageous approach.

They were afraid that the reality of what they were doing and planning would get out to the public if more and more people imitated my own act of conscience and responsibility, if other officials began to act

like responsible citizens and human beings instead of automatons and began to uphold their oath to the Constitution above their loyalty to a particular boss. So they hoped to deter that basic human loyalty by scaring them with the threat of major prosecutions like mine, or with other acts they had in mind. They failed to put me in prison, but the spectacle of having to conduct two years of legal proceedings did act as a very considerable deterrent. I know that there were people who were prepared to put out information. But when they saw the possibility of the hundred-and-fifteen-year sentence facing me, they held back to see, till the dust settled, and never did get around to it.

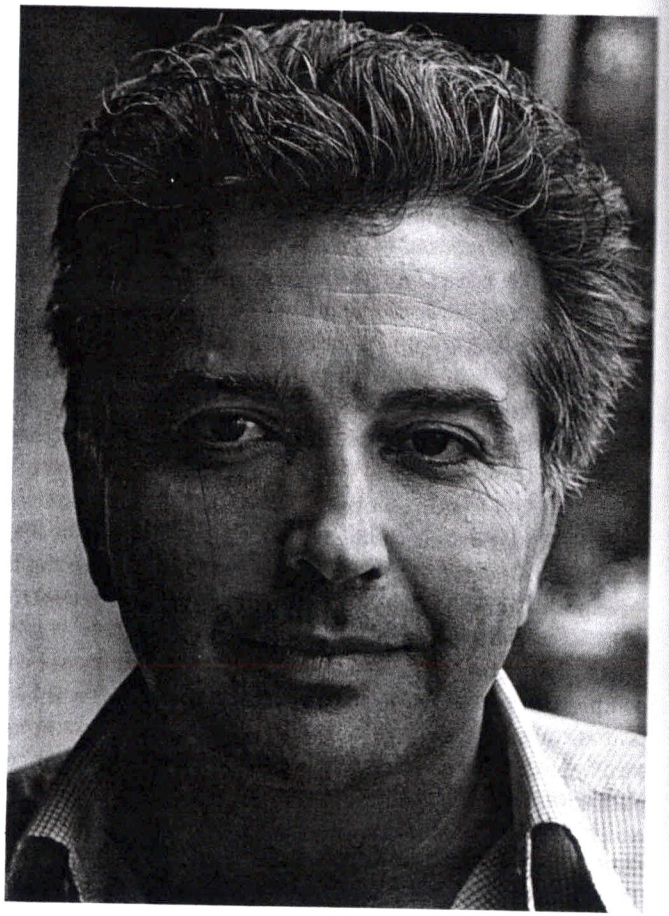
For any citizen to put himself or herself in direct opposition to government policy takes some risk. And jail is in fact not the most important consideration in most cases—rather, it's the risk to their reputation, with their spouses, and above all risks to their jobs, whether they work for the government or not. I don't think that we can avert such wrongful wars in the future, or other grave dangers to our environment elsewhere, without people taking risks. And that requires courage. So since courage is contagious, I think that examples of that in the form of major exposures and nonviolent peaceful disobedience or civil resistance are essential to the process.

I think it's going to be a very great challenge, but it's not without some compensation. I think that in the course of it, there will be a mobilization against imperialism that will be broader than anything we've ever seen before. If I'm wrong, then the public can be sold anything. The implications of that would be very sinister. But I'm not convinced that that's really true. In the end, they didn't sell Vietnam. It took a long time, but the public did finally see through it.

SAMUEL POPKIN

I knew Dan Ellsberg very well. He and I were two of the few Vietnam nuts in Cambridge who could talk about Vietnam for hours at a time, day and night. We had been there at the bottom, living in the villages. And both of us were writing about it. Although I knew an enormous amount about Dan's work, I did not have any idea whatsoever that the Pentagon Papers were going to be released. I knew zero about that. So I didn't have to worry about: Do I want to protect my friend or not?

The FBI visited me right after the papers were released. I had just returned from Hong Kong, and the next day they came to my office. The agents said, "Classified documents are out." They were polite, not evil



SAMUEL POPKIN

and not scary. But it was, of course, very scary being interviewed, because an awful lot of classified material floated around in Vietnam. And I'd talked to many people about things that were not public. I didn't know what the FBI was trying to do. I was a little upset by the tone of their very strange questions. I made it clear to them that I had never seen the Pentagon Papers, that I didn't know Ellsberg had them, and that I had no idea this was going to happen.

They asked me a thousand questions of the "Does Daniel Ellsberg still beat his wife?" kind. They were really questions you couldn't possibly answer, like "Would you say he's excessively demented?" I couldn't figure out where they came from until I read Seymour Hersh's book about Henry Kissinger. The things Kissinger was saying about Ellsberg were literally what the FBI was asking me to confirm: "Would you say Ellsberg was a madman?" "Would you say he hates his country?" And I said, "No. He may be single-minded. He may be intense. But he is very patriotic, and he is anything but a madman." I answered all the sane questions. For questions like "Is he still obsessed with sex?" I made it clear that I just didn't know how to answer one way or the other.

Certainly one of the things they wanted was Ellsberg dirt. Not criminal dirt, but smear dirt. I thought at the time that the reason they were trying to destroy Ellsberg was partly because he was so credible. He's very effective, one of the smartest people I've ever known, and not a person you'd easily want to debate. They were also afraid of what else he knew. He did know more than any civilian at that time about American nuclear planning, strategy, and targeting. Yet he never released a single word about any of that. Ever. Nor did he release the diplomatic volumes of the Pentagon Papers that could have been extremely damaging. But I think Nixon—he was so leak-crazy—was worried about the other shoe dropping with Daniel Ellsberg. So if you make the guy look demented enough, nothing he says will be taken as credible or serious by the press. They were out to discredit him, to make him out to be a kook and a weirdo.

David Nissen, the man in charge of prosecuting Ellsberg, pulled in a big team of prosecutors to go after everybody. They set up a grand jury in Los Angeles and another one in Boston, where I was subpoenaed. I just felt like I was a marked man. Once it's in the paper that you're being subpoenaed, it looks like you're guilty. There's no way to prove otherwise. When that happened, I talked with a career CIA official I knew. "I know you think something went on that didn't," I told him. "You're wrong, and I want to tell you why." Later, that person went out of his way to say to me, "Your quarrels are with people on the other side of the river." He meant: Your problems are at the White House.

In fact, now we know from the document that put John Ehrlichman in jail that he was the one who authorized the break-in at Dr. Fielding's office. It was part of an effort that was initiated by the White House after the release of the Pentagon Papers. But the break-in at Dr. Fielding's was only one part of the document. Another part said: We're going to

set up a grand jury, and we're going to subpoena the following people. And I was one of them.

I was very scared at first because the conspiracy laws are so vague. When conspiracy to commit a crime is a crime, any link in the chain can be a crime, even if the act, by itself, is perfectly legal. That's what makes conspiracy laws really dangerous. Maybe when I was talking with Dan about Vietnam and said, "Dan, this is great. You ought to write it up," that could have been a "conspiratorial" act. Discussing other documents, discussing other studies that were done in Vietnam that I knew about when I was there and that he knew about—any of that could have been considered part of a conspiracy.

Because we didn't know if they were after me or not, the first thing I did was claim the Fifth Amendment. The government right away said, "Well, aha. He must be hiding something." Most of the prosecutors in the Pentagon Papers case, with one or two exceptions, were "good soldiers." They didn't think about the possibility that the government could be wrong or that the conspiracy rules could be misused. It never crossed the minds of those upright little prosecutors that the purpose of the case was not to protect government security or to stop Communism but was just to prevent bad publicity for Henry Kissinger and Richard Nixon.

So I'm thinking: They could be out to cast a wide net, to set up a conspiracy. And they're thinking: We're upright. Why should he be nervous? If he's nervous around upright prosecutors, obviously he's hiding something. It was hard for them to understand what I was saying because they just assumed there were two kinds of people in the world: the people who wanted to nail Daniel Ellsberg and the people who wanted to protect him. I was trying to protect a principle—the right not to reveal confidential sources for my scholarly research—and they just weren't willing to see that.

We tried every which way to answer questions to make it clear that I knew nothing about Ellsberg and that, as long as they didn't ask about other names, I would answer them.

PROSECUTOR: Has Daniel Ellsberg ever discussed with you the possibility of releasing a copy of the Pentagon Papers to Neil Sheehan?*
POPKIN: No.

*Neil Sheehan was the *New York Times* reporter to whom Daniel Ellsberg gave the Pentagon Papers.

PROSECUTOR: Has anyone else ever discussed with you the possibility of releasing a copy of the Pentagon Papers to Neil Sheehan?
POPKIN: No.

PROSECUTOR: Has anyone discussed with you the possibility of releasing the Pentagon Papers to anyone else?
POPKIN: To the absolute best of my knowledge and memory, no.[83]

The connections that my knowledge had with what Dan Ellsberg had done were as tenuous as tenuous can be. But the connections between my knowledge and a lot of people's careers were very strong. I'd gotten interviews from people in Vietnam who wanted to remain anonymous. Ironically, some of them were military officers who were probably not the least bit sympathetic to Dan Ellsberg. But their promotions were being blocked and their files were, in effect, being put in limbo at the Department of the Army, waiting to see whether their names came out in the Pentagon Papers case. I have reason to believe, and I did at the time have reason to believe, that grand jury minutes were being secretly leaked by people in the Justice Department to people at the Defense Intelligence Agency, which is illegal. And that's what was dangerous.

The people who had written the Pentagon Papers were military men coming in and out of Cambridge. Of course I knew them and talked with them. But I didn't realize until afterward that they were working on such a big deal. And then I remembered, "Oh, yes. When I talked with Colonel X, he said he was doing a study of such and such. And General Y—Oh, that's what he must have been doing." I realized after the fact that I knew there may have been such a study. Big deal. That's all I knew. I never saw a page of it.

But the prosecutors weren't satisfied. They wanted my opinions about who might have worked on the papers or who might have had them. They asked, "Who were the persons you interviewed to acquire this knowledge of who participated in the study?" And later, "Please name them, those persons who furnished you with the information which caused you to form an opinion as to who possessed the Pentagon Papers in Massachusetts prior to June 13, 1971." And they also asked, "Mr. Popkin, you've told us you have opinions based upon your conversations with others. With whom were these conversations held?"

There were more questions. I answered them all by stating that they violated my rights under the First Amendment to freedom of press, speech, and assembly. You can't, as a scholar, have people suffer damage because they were interviewed. And I'd given them my word. The

government's questions, in effect, required me to break my oath, to trample for no justifiable reason the constitutional rights I care about. But the government just figured, "If he won't answer and then calls on the First Amendment, he must really have something."

I have to tell you that being in the grand jury room was the most extraordinarily grueling thing I ever did. You can't imagine what it's like to have your honor threatened and your whole identity called into question. It was a lot more scary than walking around unarmed in the middle of a revolution in a Vietnamese village. You're in this room. And you feel like you want to stop and look at the grand jury and say, "I don't know a goddamn thing about the papers—I told you that under oath—but the prosecutors are trying to stop my research. These men are asking questions that will hurt innocent people."

You have the feeling that every time you don't answer a question, the prosecutors are telling the jury, "See? See what he's up to?" For all I knew, those sleazy prosecutors were saying, "Watch it. We're going to ask him an innocent question, and he'll probably assert the Constitution. Why do you think he's doing that?" You don't know what they're doing, how they're manipulating. You're only there when you're being asked questions.

You do not have a right to have a lawyer in the room. Every time they asked me a question I thought was important, I demanded to see my lawyer, who was waiting outside. You can do that if you know you have that right and if you're tough enough not to crack when you're in there. But it's hard not to feel the pressure against you. It's hard not to crack.

PROSECUTOR: Mr. Popkin, do you recall an immediate reaction that was formed in your mind upon hearing about the original stories in the *New York Times* about who might have been the source?
POPKIN: I request permission to see my counsel.

PROSECUTOR: Mr. Popkin, how can your counsel be of use in this case? We are asking you about your immediate reaction.
POPKIN: I request permission to see my counsel.

PROSECUTOR: Mr. Popkin, you are being asked about your immediate opinion, how can counsel be relevant?
POPKIN: I request permission to see my counsel.

PROSECUTOR: Mr. Popkin, you are stretching things for this grand jury. Your exits from the grand jury have been ranging about five minutes. This is being an inconsiderable inconvenience to the grand jury.

The fact was that at that point they were fishing, because I'd already made it a hundred percent clear that I didn't know about this damn release. And it was chilling to be asked about your opinions, to be asked about everybody you interviewed. I had to put my work aside. I couldn't conceivably interview people on Vietnam when they might think I could be coerced into divulging their names. I mean it really was: "Here comes the chill." Many people in the scholarly community were scared by that.

At Harvard, there was a lot of support because we did not cast the issue narrowly, as an absolute First Amendment privilege—that there are never times when you should talk. We instead took the position that whenever a grand jury asks a scholar questions, it may be doing harm to the First Amendment, to the free flow of ideas and information. Therefore, it should only be done when the government can demonstrate a strong need for the information. That position was supported unanimously by a vote of the Harvard faculty. But the prosecutor wouldn't even say why the government needed the answers to the questions he asked me.

POPKIN: What is the pertinence of my opinion on this subject to the subject under inquiry?
PROSECUTOR: The grand jury does not answer questions.

Scholars should not be forced to answer questions without restriction just at the whim of any prosecutor. Whenever there is possible damage to the Constitution, it should go in front of a judge, question by question. And that's what we were saying—that you shouldn't put the Constitution in the hands of the prosecutors.

That position got me an extraordinary amount of faculty support from Republicans, Democrats, conservatives, liberals—people who felt very strongly because of the McCarthy days, like John Kenneth Galbraith and John K. Fairbank; people who were very close to the Nixon administration as well, like James Q. Wilson; and others with national stature, like Harrison Salisbury and Edwin O. Reischauer, the former ambassador to Japan.

Every single faculty member I approached wrote thorough and thoughtful affidavits for the court about the necessity of protections to do their research, making clear why my case was important to their work. They couldn't study decision making, the Cuban missile crisis, Lyndon Johnson, or any aspect of public policy without some ability to protect people. It would be a disaster. I, one hundred percent, unequivocally, think that scholars must be able to talk to people about how decisions are made at any time and for any decision.

In the past, prosecutors had not gone after professors in this way, pushing so hard to use the grand jury as a political weapon. It shook a lot of people at Harvard. After all, I was a middle-of-the-roader. I was far too ambivalent, full of real existential angst about the war, to be a vocal activist. I was neither willing to stand with the government and say the war is wonderful nor willing to take it seriously when people were ga-ga over the brave new world being developed by the National Liberation Front. I'd had lunch at the White House with Henry Kissinger to discuss my research in the villages, and I talked about abuses of CIA programs. And he'd sent memos to the head of the CIA in Vietnam. I talked with all the ambassadors in Vietnam. I gave seminars about my work in the villages to all the people in Saigon. I was considered the honest, fair critic, neither a tame house scholar nor a flaming antiwar radical.

So a lot of people were very shaken when the government started going after me, because it was a real attempt to shut down the middle. Maybe the people who disagreed with my criticisms were trying to get me. I mean, that's very plausible. There were a fair number of people who thought that one faction of the government was trying to purge dissenting moderation from within the policy process.

The faculty was behind me, but for a long time Derek Bok, the president of Harvard, simply didn't understand what was going on. He was such an honorable man that he assumed that when the government dealt with Harvard, they'd be honorable. And I suppose he assumed that I had to be a little bit paranoid. Once he saw my grand jury transcripts and understood what we were doing, he tried to help us finesse the whole thing. He went to people in the Justice Department and told them I now would agree to answer all questions of any kind that weren't about confidential sources. In turn, the government wouldn't ask me questions about confidential sources. That way, the government wouldn't look as if they had backed down. Popkin wouldn't have to play hero. And Harvard would be safe.

So we went into court. Derek Bok came before the federal district court as my lawyer to make the point that this was a serious Harvard case. He got up and said, "I've talked to people at the Justice Department in Washington, and they authorized me to tell the court that they are not going to ask Samuel Popkin any questions about confidential sources. And my client is willing to answer all other questions." At that point, the Justice Department prosecutor got up and said, "There's a misunderstanding. We *do* want to ask questions about confidential sources."

Then the judge asked me, "Will you answer?" I said, "No." They put

me in chains and took me to prison. When Derek Bok left the courtroom, he was so furious I thought he was going to go through the wall instead of the door. He even forgot to say good-by to me on my way to jail, he was so upset. My reaction was: "I told you. I told you." Nobody wanted to believe how devious this whole thing had gotten.

From beginning to end, it dragged on for about a year and a half. You make your appearance before the grand jury, plead the Fifth Amendment, and go home. A month later, they call you back and hold a hearing to give you personal immunity. Now you can't use the Fifth Amendment. Then they ask you more questions, and you plead the First Amendment. You're cited for contempt, and you appeal. Then you go to the Supreme Court, but they refuse to grant certiorari. That's when Derek Bok worked out the compromise with the Justice Department. It took a year and a half from the first time I was questioned by the FBI in July of 1971 to when I went to jail, right before Thanksgiving in 1972.

As I was being taken off to jail, my wife, Susan, read my statement before television cameras: "If scholars are to be questioned without restriction about their sources, grand juries will become the government's instrument to limit the free flow of information about government to the public. This is intolerable in a democracy, and I could not justify any part I might take in setting that precedent."

I went to Dedham County Prison, Sacco and Vanzetti's old jail, for a week. I got out after that because the solicitor general was embarrassed about lying to the Supreme Court on my petition for certiorari. He had probably lied inadvertently because he had also believed the Justice Department. He had told the Court, "There is no First Amendment issue here at all because we are not asking scholarly opinions. We're not asking confidential sources." If it had become known that the solicitor general had lied to the Supreme Court, the potential scandal could have destroyed his entire reputation.

When I was released, I said, "Beyond all else, I hope my case has brought concern to bear on the need to look at grand juries more carefully—at the coercive powers vested in grand juries. . . . The grand jury was originally designed to stand between the people and the government, and it's time it was brought back to that role."

THE SHOOTINGS AT KENT STATE

On April 28, 1970, without the consent or knowledge of Congress, President Richard Nixon ordered American troops to join the South Viet-